

schools. It discusses legislative power to organize schools, including to authorize charter schools, school districts and administrative officers and boards, school property and buildings, school funds and expenditures, teachers and other employees, pupils and their relationship to the school, regulation of curricula, the relationship between government and church-related schools, and private schools, including correspondence schools and other private schools of a posthigh school level, but not colleges.

Federal Aspects

Schools are subject to numerous provisions of federal law pertaining to financial assistance and mandates, including the No Child Left Behind Act and the Equal Access Act. Federal statutes have also been enacted with the aim of providing equal educational opportunities, such as the Individuals with Disabilities Education Act. Federal constitutional law affects the regulation of students' rights to free speech and to publish student newspapers, as well as the interaction of schools and religion. Moreover, § 2 of the Voting Rights Act of 1965, which establishes a general prohibition against voting procedures that result in the denial or abridgment of the right to vote on account of race or color, is generally applicable to school board elections.

Treated Elsewhere

Access of inmate to education, see Am. Jur. 2d, Penal and Correctional Institutions § 99

Charities for educational purposes, see Am. Jur. 2d, Charities §§ 41 to 49

Colleges and universities, see Am. Jur. 2d, Colleges and Universities §§ 1 et seq.

Discrimination in education, see Am. Jur. 2d, Civil Rights §§ 290 to 357

Eminent domain: propriety of exercise of eminent domain power for educational purposes, see Am. Jur. 2d, Eminent Domain § 57

Federal taxes, deduction for education expenses, see Am. Jur. 2d, Federal Taxation §§ 16191 to 16204; charitable deduction for education expenses, see Am. Jur. 2d, Federal Taxation § 19052

Fraternalities or sororities, see Am. Jur. 2d, Colleges and Universities § 28

Indian and Native American children, education of, see Am. Jur. 2d, Indians, Native Americans § 28

Intoxicating liquor, sale near schools, see Am. Jur. 2d, Intoxicating Liquors § 112

Mandamus with regard to school matters, see Am. Jur. 2d, Mandamus §§ 226 to 245

Public securities issued for school purposes, see Am. Jur. 2d, Public Securities and Obligations §§ 120 to 122

Purchase of computers, requirements for schools, see Am. Jur. 2d, Computers and the Internet § 74

School land grants, see Am. Jur. 2d, Public Lands §§ 60 to 63

Searches of public school students and personnel, see Am. Jur. 2d, Searches and Seizures §§ 30, 38, 39

State taxes, exemption of educational institutions from, see Am. Jur. 2d, State and Local Taxation §§ 290 to 295

Tort liability for operation of public schools, see Am. Jur. 2d, Municipal,

County, School, and State Tort Liability §§ 457 to 552

KeyCite®: Cases and other legal materials listed in KeyCite Scope can be researched through the KeyCite service on Westlaw®. Use KeyCite to check citations for form, parallel references, prior and later history, and comprehensive citator information, including citations to other decisions and secondary materials.

I. INTRODUCTORY MATTERS**A. DEFINITIONS****Research References***West's Key Number Digest*

Education ⇨10, 13, 21, 26

A.L.R. Library

A.L.R. Index, Schools and Education

West's A.L.R. Digest, Education ⇨10, 13, 21, 26

§ 1 Education; school**Research References**

West's Key Number Digest, Education ⇨10, 13, 26

"Education" consists of the opportunity to obtain the knowledge and skills described in caselaw, legislatively enacted education goals, and standards, but does not reflect a right to a guaranteed educational outcome.¹

Although the term "school" is a generic term with numerous meanings, the common denominator is that a "school" is a place where instruction is given, generally to the young.² Although the word "school" in its broad sense includes all schools or institutions, regardless of grade level,³ the word "school" frequently has been defined in state constitutions and statutes as referring only to the public common schools,⁴ and when used in a statute or contract, "school" usually does not include universities, business colleges, or other institutions of higher education unless the intent to include them is clearly indicated.⁵

[Section 1]

¹*McCleary v. State*, 173 Wash. 2d 477, 269 P.3d 227, 276 Ed. Law Rep. 1011 (2012) (under a constitutional article requiring a state to make ample provision for the education of children in a nondiscriminatory manner).

²*Possekkel v. O'Donnell*, 51 Ill. App. 3d 313, 9 Ill. Dec. 332, 366 N.E.2d 589 (1st Dist. 1977); *State v. Peterman*, 32 Ind. App.

665, 70 N.E. 550 (1904).

³*State v. Seattle Elec. Co.*, 71 Wash. 213, 128 P. 220 (1912).

⁴*Pike v. State Board of Land Com'rs*, 19 Idaho 268, 113 P. 447 (1911).

Definition of "common" or "public" schools, see § 2.

⁵*Pike v. State Board of Land Com'rs*, 19 Idaho 268, 113 P. 447 (1911); *State v. Seattle Elec. Co.*, 71 Wash. 213, 128 P. 220

§ 2 "Common" or "public" schools

Research References

West's Key Number Digest, Education ☞10, 13, 26

The phrase "public schools" refers to general elementary or grammar schools¹ and intermediate or high schools.² References to "common schools" may simply mean public schools.³ The term "common schools" may be defined under a state constitution as a school taught in a district laid out by authority of the school laws, under the control of trustees elected under those laws, by a teacher qualified according to law to teach.⁴ Broadly speaking, "common" or "public" schools are free and open to all on equal terms.⁵

Private schools,⁶ colleges and universities,⁷ and technical and professional schools are generally not considered to be public schools.⁸

§ 3 Charter schools

Research References

West's Key Number Digest, Education ☞10, 13, 21, 26

(1912).

[Section 2]

¹Jeffries v. Board of Trustees of Columbia Graded Common School, 135 Ky. 488, 122 S.W. 813 (1909).

A common school pupil is in pre-school, kindergarten, or grades one through eight. Hull v. Albrecht, 190 Ariz. 520, 950 P.2d 1141, 124 Ed. Law Rep. 1061 (1997).

²Dickinson v. Edmondson, 120 Ark. 80, 178 S.W. 930 (1915); McLeod v. State, 154 Miss. 468, 122 So. 737, 63 A.L.R. 1161 (1929); Mumme v. Marrs, 120 Tex. 383, 40 S.W.2d 31 (1931).

³Vincent v. Voight, 2000 WI 93, 236 Wis. 2d 588, 614 N.W.2d 388, 146 Ed. Law Rep. 422 (2000).

A state constitution's provision requiring that the legislature provide by law for establishment of a uniform and general system of common schools requires that the legislature establish free public schools that will provide a basic education. Pendleton School Dist. 16R v. State, 345 Or. 596, 200 P.3d 133, 241 Ed. Law Rep. 423 (2009).

⁴Board of Regents of Kentucky Community and Technical College System

v. Farrell, 443 S.W.3d 12, 310 Ed. Law Rep. 1165 (Ky. Ct. App. 2014), further providing that a school operated by the State Board of Education cannot be a "common school," as the term is used in the state constitution, because a common school cannot exist without a common school district.

School districts, generally, see §§ 20 to 52.

⁵Council of Organizations and Others for Educ. About Parochiaid, Inc. v. Governor, 455 Mich. 557, 566 N.W.2d 208, 120 Ed. Law Rep. 265, 78 A.L.R.5th 767 (1997); School Dist. No. 20, Spokane County v. Bryan, 51 Wash. 498, 99 P. 28 (1909).

⁶Columbia Trust Co. v. Lincoln Institute of Kentucky, 138 Ky. 804, 129 S.W. 113 (1910).

Private schools, see §§ 437 to 463.

Participation in a school voucher program does not transform a private school into a public one. Jackson v. Benson, 218 Wis. 2d 835, 578 N.W.2d 602, 126 Ed. Law Rep. 399 (1998).

⁷Pollitt v. Lewis, 269 Ky. 680, 108 S.W.2d 671, 113 A.L.R. 691 (1937).

⁸Yanow v. Seven Oaks Park, Inc., 11 N.J. 341, 94 A.2d 482, 36 A.L.R.2d 639 (1953).

Validity, construction, and application of statute or regulation governing charter schools, 78 A.L.R.5th 533

A charter school is a school managed by private interests and financed primarily with local school district funds.¹ “Charter schools” are a statutorily created alternative to traditional public schools that are in the nature of semiautonomous public schools, operating under a contract with a state or local school board.² Charter schools are public schools and also public entities,³ as well as part of the public school system.⁴ Specifically, open-enrollment charter schools are (1) governmental bodies for purposes of open meetings and sunshine laws; (2) local governments under laws related to local government records; (3) governmental entities, political subdivisions, and local governments for purposes of public purchasing and contracting laws;⁵ and (4) are governmental entities subject to a State Tort Claims Act.⁶

◆ **Distinction:** A “site” and a “schoolsite” are not the same within the meaning of a charter schools act; “site” speaks to location, while “schoolsite” speaks to use.⁷

[Section 3]

¹Villanueva v. Carere, 85 F.3d 481, 110 Ed. Law Rep. 38 (10th Cir. 1996) (applying Colorado law); Porta v. Klagholz, 19 F. Supp. 2d 290, 130 Ed. Law Rep. 539 (D.N.J. 1998) (applying New Jersey law); Council of Organizations and Others for Educ. About Parochialism, Inc. v. Governor, 455 Mich. 557, 566 N.W.2d 208, 120 Ed. Law Rep. 265, 78 A.L.R.5th 767 (1997) (public school academy).

Establishment and regulation of charter schools, generally, see §§ 11 to 15.

²Monarch Academy Baltimore Campus, Inc. v. Baltimore City Board of School Commissioners, 457 Md. 1, 175 A.3d 757, 351 Ed. Law Rep. 330 (2017).

³Moore v. Lift for Life Academy, Inc., 489 S.W.3d 843, 332 Ed. Law Rep. 571 (Mo. Ct. App. E.D. 2016).

Definition of public school, see § 2.

⁴Los Angeles Leadership Academy, Inc. v. Prang, 46 Cal. App. 5th 270, 259 Cal. Rptr. 3d 680, 375 Ed. Law Rep. 432 (2d Dist. 2020), review filed, (May 19, 2020).

Amended version of a Charter School Act, which provided for the establishment of charter schools designated as public schools, satisfied a state constitu-

tion’s requirement of a general and uniform system of public schools; the charter schools provided an instructional program of basic education just like common schools, the Act required charter schools to employ certified teachers with limited exceptions that also applied to common schools, and the Act required charter schools to participate in a statewide assessment. *El Centro De La Raza v. State*, 192 Wash. 2d 103, 428 P.3d 1143, 359 Ed. Law Rep. 536 (2018).

⁵*Konark Limited Partnership v. BTX Schools, Inc.*, 580 S.W.3d 194, 369 Ed. Law Rep. 1111 (Tex. App. San Antonio 2018), review denied, (June 5, 2020).

Open meeting or sunshine law applicable to school boards, generally, see § 70.

⁶*Flanner House of Indianapolis, Inc. v. Flanner House Elementary School, Inc.*, 88 N.E.3d 242, 350 Ed. Law Rep. 430 (Ind. Ct. App. 2017); *Kreutzer v. Aldo Leopold High School*, 2018-NMCA-005, 409 P.3d 930, 351 Ed. Law Rep. 579 (N.M. Ct. App. 2017).

⁷*Anderson Union High School Dist. v. Shasta Secondary Home School*, 4 Cal. App. 5th 262, 208 Cal. Rptr. 3d 564, 336 Ed. Law Rep. 409 (3d Dist. 2016), as modified on denial of reh’g, (Nov. 16, 2016).

§ 4 High schools

Research References

West's Key Number Digest, Education ⇨10, 13, 26

A high school is a school in which the higher branches of a common school education are taught.¹

A "standardized high school" is a high school that complies with state-established standards and conditions under which state aid will be furnished, and the character of a high school as a standardized school is not affected by the fact that a nonstandardized high school may offer instruction or courses of a superior character, depending upon the action of the board of education.²

§ 5 "Schoolhouse"

Research References

West's Key Number Digest, Education ⇨10, 13, 26

As used in some statutes, the word "schoolhouse" includes not only the schoolhouse itself but also the entire school plant, including playgrounds, gymnasiums,¹ stadiums, and structures maintained for competitive athletic games and sports, and other buildings that are used in a manner that is prescribed or permitted by school law.²

B. EDUCATION AS GOVERNMENT FUNCTION

Research References

West's Key Number Digest

Education ⇨10, 12 to 16

A.L.R. Library

A.L.R. Index, Schools and Education

West's A.L.R. Digest, Education ⇨10, 12 to 16

§ 6 Education as government function, generally; primary responsibility of state

Research References

West's Key Number Digest, Education ⇨10, 12 to 14

[Section 4]

¹Whitlock v. State, 30 Neb. 815, 47 N.W. 284 (1890).

²State v. Alquist, 59 N.D. 762, 231 N.W. 952, 72 A.L.R. 494 (1930).

[Section 5]

¹McNair v. School Dist. No. 1 of

Cascade County, 87 Mont. 423, 288 P. 188, 69 A.L.R. 866 (1930).

School property and buildings, generally, see §§ 81 to 90.

²Board of Ed. of City of Asbury Park v. Hoek, 38 N.J. 213, 183 A.2d 633 (1962).